IN THE HIGH COURT OF PUNJAB AND HARYHANA AT CHANDIGARH

CR No. 5393 of 2000

Date of Decision: .03.2007

Mrs. Harvinder Kaur Sabharwal ...Petitioner

Vs.

Navneet Kaur ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.M.L.Saggar, Advocate,
for the petitioner.

Ms.Puneeta Sethi, Advocate,
for the respondent.

Vinod K.Sharma, J.

Present revision petition has been filed against the order passed by the learned Appellate Authority, Chandigarh vide which the appeal filed by the respondent/landlady was accepted and the order passed by the learned Rent Controller dismissing the eviction petition was set aside.

The respondent-landlady being owner of Booth No.22, Sector

34-C, Chandigarh let out the premises to the petitioner at the rate of Rs.3100/- per month. It was claimed that the premises were required by the landlady for her use and occupation because her family was engaged in business. It was claimed that the respondent-landlady was share-holder of M/s Gray Clothing Company (India) Pvt. Ltd. having its registered office at Delhi. The company is said to be manufacturing ready-made garments in which her husband was share-holder and Director. It was claimed that her son who was a final year student was also to settle in business. It was claimed by the respondent-landlady that she required the Booth in question for her business which she was to run in association of her son. It was further claimed that beside distribution of products of M/s Gray Clothing Company (India) Private Limited in the States of Punjab and Himachal Pradesh a few other manufacturers are also interested in giving the agency to her once she established her business at Chandigarh. So eviction was sought for expansion of business for financial-cum-family reasons. It was also claimed that she was not occupying any other such building in urban area of Chandigarh nor she has vacated such building at any time or after the commencement of the East Punjab Urban Rent Restriction Act, 1949 (for short the Act). It was also claimed that her son was also not in occupation of any building nor he has vacated any such building.

The petition was contested by the petitioner-tenant in which she has pleaded that the eviction petition is based on false and incorrect facts. It was further claimed that the respondent-landlady has suppressed the true and material facts from the Court because she has failed to disclose

that the members of her family had been doing the business in the name and style of M/s Super Center at Shop No.65, Sector 17-A, Chandigarh and similar business was closed in the year 1995. It was further pleaded that respondent-landlady also suppressed the facts regarding her ownership over the shop in Sector 45, Chandigarh. On account of this, it was claimed that the petition filed by the landlady was mala fide. It was further claimed that the family of the petitioner was permanently settled at Delhi for residence as well as business because Delhi is the best market for ready-made garments. It was claimed that the son of the petitioner would join his parents in their business at Delhi. It was also pleaded that the respondent-landlady wanted to increase the rent to Rs.5000/- for which the petitioner did not agree so the present petition was filed to harass her.

Replication was filed to controvert the allegations in the written statement and to reiterate those in the petition. It was also pleaded that no material facts have been suppressed. It was claimed that her husband and brother-in-law were carrying on business in the name and style of M/s Super Center, Chandigarh and therefore, this was not relevant for the matter in dispute. However, with regard to the property situated in Sector 45, Chandigarh it was pleaded that the same was owned by her which is situated within the Lal Dora of village Burail and was not suitable to be used for the business. It could only be used for go-down or for residential purposes.

On the pleadings of the parties the following issues were framed:-

1. Whether the petitioner requires the demised premises for

her personal requirement as pleaded in the petition?OPP

2. Whether the petition is liable to be dismissed as pleaded in the preliminary objection? OPPR

3. Relief.

Learned Rent Controller came to the conclusion that as the respondent-landlady had suppressed the material facts with regard to the running of business by husband in Sector 17, Chandigarh and also with regard to the property in Sector 45, Chandigarh which were admitted in the replication, therefore, she was not entitled to any relief as she did not come to the court with clean hands. It was also held that the respondent-landlady had failed to prove that she bona fide required the demised premises for her use and occupation as she was permanent resident of Delhi. Learned Appellate Authority came to the conclusion that the claim of the respondent-landlady that she required the Booth for running the business could not be said to be wrong, especially, when it was not in dispute that Inderjit Singh son of the petitioner had completed his studies and was required to be settled in business. It was further held that the respondent-landlady had right to expand her business for setting her son at Chandigarh as well.

The contention of the tenant-petitioner that Delhi was the best market for ready-made garments and hosiery goods was repelled by observing that it was open to the party to expand business and therefore, there can be no bar for a person to start business at Chandigarh. The learned Appellate Authority held the need to be bona fide by observing as under:-

"12. A landlady has a right to use her building if she actually requires the same for bona fide use and occupation by herself or by her son. However, she cannot evict the tenant on account of mere wish. In this case, the statement of appellant cannot be disbelieved until and unless rebutted cogently, which has not been done so. In this regard, the reliance can be placed on Mattulal Vs. Radhe Lal 1974 RCR 441, Mohan Lal Vs. Smokhan Lal 1996 (2) RCR 346, Nathu Mall Vs. Kailash Chandra and others 1996 (2) Rent Law Reporter 540, Radhakrishnan Vs. S.N. Longanatha Mudaliar 1998 (2) PLR 77, Sarla Ahuja Vs. United India Insurance Company Ltd. 1998 (2) RCR 533 and Ragavendra Kumar Vs. Firm Prem Machinery and Co. 2001 (1) RCR 135. In all these authorities, it has been held that where the landlord requires his building for himself or his son under tenancy for bona fide use and occupation then he has a right to evict the tenant. The landlord is the best judge of his requirement. In this case, when the appellant landlady had stated that she requires the booth for starting the business at Chandigarh, it cannot be said that she does not intend to settle at Chandigarh. For the sake of arguments,if she does not start business in the booth within a reasonable period then the respondent would have every right to get the possession of the building back in view of the provisions of the Rent Act."

As regard the claim of concealment of facts was concerned the learned Appellate Authority came to the conclusion that non-mentioning of

shop in Sector 45, Chandigarh did not amount to suppression of material fact because in the replication she had admitted the fact of shop owned by her in Lal Dora of village Burail. The learned Appellate Authority came to the conclusion that when the facts had been pleaded in the replication it cannot be said that material facts have been suppressed as the replication is also part of the pleadings. The statement of the landlady that the shop situated in Sector 45, Chandigarh was not suitable for starting business of ready-made garments and hosiery articles was also accepted. The court also took note of the fact that merely availability of alternative accommodation can not be a ground to deny the right of eviction to the landlord. With these observation, the appeal was accepted and the petition filed by the respondent-landlady was allowed.

Mr.M.L.Saggar, learned counsel appearing for the petitioner has challenged the finding of the learned Appellate Authority on the plea that it was the duty of the landlady to state all material facts in the ejectment petition. The contention of the learned counsel for the petitioner was that ingredients of Section 13 of the Act were required to be complied with by the landlady while filing the ejectment petition. By placing reliance on the judgment of Full Bench of this Court in the case of **Banke Ram Vs. Smt.Sarasti Devi 1977 P.L.R. 112,** learned counsel for the petitioner contended that it was mandatory on the part of respondent-landlady to specifically plead in the ejectment application the ingredients contained in sub-clause (b) and (c) of Section 13 (3) (a) (i) of the Act.

However, this contention of the learned counsel for the petitioner has no force as it is not in dispute that the respondent-landlady

had complied with the ingredients of Section 13 of the Act by stating that she does not own or possess any other commercial building in the area concerned or she has not vacated any such building after the commencement of the Act. Similar averments qua her son was also made. However, the contention of the learned counsel for the petitioner that by not disclosing the factum of the shop in Sector 45, Chandigarh would amount to suppression of material facts and therefore, the requirement as pleaded were required to be upheld to be mala fide. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court in the case of **Kishan Chand Vs. Jagdish Pershad & Ors. 2002 (1) RLR 20.** Para No.6 (iv) of the said judgment approving the finding of Rent Controller reads as under:-

> "(iv) The present petition has been filed by the petitioners for alleged bona fide requirement of petitioner no.1 only. The discussion above, makes crystal clear that the petitioner no.1 has concealed the material fact that his son named Atul, owns a flat at Pooja apartments, Patparganj, New Delhi in pleadings. The petitioner no.1 has also sought eviction of respondent/tenant for residential requirements of his said son Atul and his family members. In my considered opinion, the petitioner no.1 is guilty of concealment of residential accommodation owned by his son at Pooja apartments, Patparganj, Delhi. It is well settled law that a person concealing the material fact cannot seek the assistance of the court. Further, as already discussed above, the petitioner No.1

is in possession of 35 rooms which accommodation is more than sufficient to the petitioner no.1."

Ms. Puneeta Sethi, learned counsel appearing on behalf of the respondent, however, submitted that the ownership of shop in Sector 45, Chandigarh was not mentioned as it was not a suitable accommodation for running of business of the ready-made garments and hosiery products for which the ejectment was sought. Learned counsel made reference to para No.4 of the petition to mention that she had merely mentioned that the petitioner was not occupying in the urban area concerned for the purpose of business any other such building and she has not vacated such building at any time before or after the commencement of the Rent Act in this urban area. Para No.4 of the petition reads as under:-

"4. That the petitioner is not occupying in Urban Area concerned (Urban Area of Chandigarh) for the purpose of her business any other such building and she has not vacated such building at anytime before or after the commencement of the Rent Act in this Urban Area."

Learned counsel for the respondent further placed reliance on the judgment of this Court in the case of **Jag Dutta Vs. Smt.Savitri Devi AIR 1977 Punjab and Haryana 68** to contend that plea of concealment of facts cannot be sustained as the petitioner had disclosed the facts in the replication which is also part of the pleadings. Para No.18 of the said judgment reads as under:-

"18. The learned counsel for the petitioner raised two arguments, firstly that the landlady did not specifically

> incorporate two of the ingredients mentioned in Section 13 (3) (a) (1) of the 1946 Act, namely, that she was not occupying another residential building in the area of Ambala Cantonment and that she had not vacated such a building without sufficient cause after the commencement of the Act in Ambala Cantonment and, secondly, that she did not require the house bona fide for her residence. I have heard the learned counsel for the parties and do not find merit in any of the contentions. I shall first advert to the first contention. It is not disputed that the aforesaid two ingredients were taken by the landlady in her replication filed in reply to the written statement. It is an established proposition of law that replication is a part of pleadings. In the circumstances, it cannot be said that the two ingredients of Section 13 (3) (a) (i) have not been pleaded by the landlady."

In view of the contentions raised by the learned counsel for the respondent, there is no force in the arguments raised by the learned counsel for the petitioner. Once in the replication facts were pleaded it could not be said to be a case of suppression of material facts from the court, especially when prior to filing of the petition notice was issued to the petitioner wherein the fact regarding shop at Burail was duly mentioned.

Learned counsel for the petitioner thereafter submitted that after filing of the petitioner, there has been separation of business between the husband of the landlady and his brother and therefore, the respondent

has settled in business at Delhi. It was also pleaded that son of the respondent-landlady has got married and he is doing business along with his father at Karol Bagh. This contention of the learned counsel for the petitioner also does not have any force as the case set up by the respondent-landlady in the rent petition was that the shop at Chandigarh was required for expansion of business which was being run at Delhi. It could not be expected from her to sit idle till the shop is evicted and not to do any business at Delhi or to make her son sit idle as is sought to be suggested by the learned counsel for the petitioner.

Learned counsel for the petitioner, thereafter, by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Sri Kempaiah Vs. Lingaiah and Ors. 2001 (2) Rent Law Reporter 612** and **Indrasen Jain Vs. Rameshwardas 2005 (1) RCR 227** contended that eviction can be ordered only on the basis of bona fide requirement and mere wish or desire on the part of the landlord to have the premises would not amount to bona fide requirement.

There can be no dispute with the proposition as sought to be contended by the learned counsel for the petitioner. However, in the present case, it would be noticed that the respondent-landlady led sufficient evidence to show her bona fide requirement. The expansion of business and settlement of son cannot be said to be a mere desire but a need.

Learned Appellate Authority on the basis of evidence on record rightly came to the conclusion that the respondent-landlady had stated that she required the Booth for starting business at Chandigarh and she being the best judge of her requirement she was entitled to seek

eviction on the ground of bona fide requirement. The Appellate Authority further noticed the provisions of the Rent Act to hold that in case respondent failed to start business in the Booth within a reasonable period then the petitioner would have every right to get possession of the building back under the provisions of the Act. Thus, there is no scope to interfere with the findings recorded by the learned Appellate Authority.

This petition being devoid of any merit is dismissed.

(Vinod K.Sharma)

March ,2007 **Judge**

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